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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

SEP 22 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

MM DOCKET NO. 93-87

RAYMOND W. CLANTON)

File No. BPH-911216MC

LOREN F. SELZNICK)

File No. BPH-911216MD

For Construction Permit for a
New FM Station on channel 279A
in El Rio, California)

To: Honorable John M. Frysiak
Administrative Law Judge

PETITION TO SUBSTITUTE "CORRECTED SWORN DECLARATION"


Loren Selznick respectfully petitions for leave to substitute the attached "Corrected Sworn Declaration" for the Sworn Declaration that was attached as Appendix B to the "Opposition to Petition to Enlarge", filed by Selznick on September 16, 1993.

The Sworn Declaration of Brett Miller that was attached as Appendix B to last Thursday's Opposition inadvertently omitted seven words due to a computer error.¹

¹ Mr. Miller reviewed a draft of the Sworn Declaration that was faxed to him at an out-of-town office in Washington State, where he was traveling on business. He agreed with Selznick's counsel that several typos in the draft would be corrected by counsel's office, he then signed page 3 of the Sworn Declaration, and immediately faxed the original page 3 back to counsel's office for filing. When the typos were corrected, however, the seven words..."advised her to expect 'up to six'"... were shifted by counsel's computer from page 2 to page 3. Yet, because the original page 3 (executed by Brett Miller) and the revised pages 1 and 2 were collated as the filed Sworn Declaration, the seven words shifted to page 3 were inadvertently omitted from the Sworn Declaration filed on September 16, 1993.

Mr. Miller has reviewed again the entire Sworn Declaration, as it was corrected last week prior to filing, and re-executed the September 16, 1993 Sworn Declaration (on September 21, 1993). The re-executed "Corrected Sworn Declaration" is attached.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert Thompson", with a stylized flourish at the end.

Robert Lewis Thompson
PEPPER & CORAZZINI
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

Counsel for Loren Selznick

September 22, 1993

RLT/kde
c:\wp\4070\declar.cor

"Corrected"
Sworn Declaration

1. My name is Brett Miller and I am a communications consultant who resides in Ventura County, California. I have had experience in directly advising numerous clients regarding the construction and/or start-up of Class A FM stations in California.

2. I have advised Loren Selznick regarding her proposed FM start-up in Ventura County, California. I authorized Ms. Selznick to submit my August 2, 1993 construction proposal to the FCC in connection with the proposed financial Amendment to her pending El Rio application.

3. I am aware that Ms. Selznick's competitor in the FM proceeding, Raymond Clanton, has raised certain questions about the advice that I have given to Ms. Selznick. This Declaration is submitted to answer Mr. Clanton's questions.

4. First, it is important to explain why I advised Ms. Selznick that her 1991 cost estimate of \$360,070 was unrealistically high. Simply put, no one in today's difficult FM environment would reasonable spend that much money to construct a start-up, Class A FM in Ventura County. Such high embedded costs could pose a survivability problem and are not necessary to construct and successfully operate a Class A FM station in Ventura County.

5. Second, none of Mr. Clanton's objections to my cost estimates is valid:

(a) He questions my \$15,000 estimate for "studio equipment" and "furniture". These items might more precisely be titled "miscellaneous studio equipment" and "furniture". Indeed, Mr. Clanton ignores that I separately budgeted over \$2,000 for remote control and EBS equipment, \$2,200 for a modulation monitor, \$3,400 for stereo generation/processing equipment and over \$10,000 for satellite interface and production. See Attachment 1. Thus, total "studio equipment" costs will exceed \$22,000. My use of the term "studio equipment and supplies" was meant to include studio equipment such as a CD-player, headphones, microphones and other miscellaneous items. It is important to keep in mind that Ms. Selznick proposed satellite-fed programming, which lowers the cost of studio/production outlays.

(b) He next contends that my estimate "omits" the cost to prepare the site and to remodel the studio. That is absolutely untrue. First, I advised Ms. Selznick in my August 2, 1993 letter that I had spoken to the tower site owner and that she would bear only the cost of constructing a transmitter building and 80' steel tower (for which I budgeted about \$10,000). I specifically noted that her site was multi-use already and there was already electricity available. Thus, site preparation was fully considered. Second, I advised Ms. Selznick that, because the rental market in Ventura County is so competitive, she would be able to get studio improvements "included in the rent base". See Attachment 1 at 2. I even

advised her to expect "up to six months of free rent" (id.). That is one reason why I advised her that monthly operating costs would be approximately \$10,000.

(c) Indeed, I advised Ms. Selsnick in a separate letter that the itemized operating costs were \$10,000 per month. I not only stand by that estimate, it is my opinion that her monthly costs will not exceed \$8,000.

(d) Finally, the approximately \$10,000 monthly operating budget already allows an amount to cover normal engineering and legal expenses (there is specific allowance for monthly use of a contract engineer). I also budgeted \$5,000 for engineering labor during construction. See Attachment 1 at 2.

6. In sum, not only am I confident about the \$79,460 construction budget and the \$10,000 monthly operating cost estimate, I believe the costs will be lower. These costs are based on paying "retail", when, in practice, I believe Ms. Selsnick can "do some shopping around" and get even better bargains. See Attachment 1 at 2.

The foregoing is true and complete under penalty of perjury.
Executed: September 16, 1993.

Brett E. Miller 9/21/93
Brett Miller

CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Petition to Substitute Sworn Declaration" was served by prepaid, First Class U.S. Mail on this 22nd day of September 1993, on the following:

- * Honorable John M. Frysiak
Room 223
Federal Communications Commission
2000 L Street, NW
Washington, DC 20036
- * Paulette Laden, Esq.
Hearing Branch -- Room 7212
Federal Communications Commission
2025 M Street, NW
Washington, DC 20054

Jerrold D. Miller, Esq.
Miller & Miller, P.C.
1990 M Street, NW
Suite 760
Washington, DC 20036


Karen D. Anderson

* By Hand